IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal (L) No.234 of 2007
In
Contempt Petition No.87 of 2004
In
Suit No.2000 of 2002

M/s.Laxmi Avenue Co-operative Housing Society Ltd. .. Appellant (Org.Petitioner)

Vs.

Krishnakant Raghunath Sawant & Ors. .. Respondents

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Shri Chandnani i/b M/s.Lexim Associates for the appellant.

S/Shri N.B.Shah i/b Puyush Shah for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 27TH APRIL, 2007

P.C.

1. Heard. The appellant challenges the order dated 24th January, 2007 passed in Contempt Petition No.87 of 2004 in Suit No.2000 of 2002. A preliminary objection has been raised about the non maintainability of the appeal by the learned advocate appearing for the respondents.

2. By the impugned order, the Learned Single Judge has rejected the petition for initiating contempt proceedings against the respondents. No such order is appealable and the law in that regard is well settled. The learned advocate for the appellant drawing our attention to the decision of the Apex Court in **Midnapore Peoples' Co-op.Bank Ltd. v. Chunilal Nanda,** reported in AIR 2006 SC 2190, particularly to the clause (V) in paragraph 11 thereof, submitted that any aggrieved person can file appeal against the order passed in contempt proceedings deciding the issue or making any direction relating to the merits of the dispute between the parties.

3. The Clause (V) of paragraph 11 of the said decision reads thus:-

> "If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a

learned single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases)."

4. Plain reading of the above quoted clause (V) would disclose that the ruling therein is to the effect that in case where in the contempt proceedings the Court proceeds to decide any matter regarding merits of the dispute between the parties in those cases, even the applicant, in a contempt proceeding, can challenge such order as by such order obviously even the applicant could be the aggrieved party. But merely because the court rejects the application for contempt proceedings against the opponent, such order does not amount to deciding any issue or making any direction relating to the merits of the dispute between the parties, and therefore, the applicant would be termed to be an aggrieved person entitled to challenge the said order. This would also be clear if one reads the Clauses I and II of paragraph 11 of the said decision, which read thus:-

I. An appeal under section 19 is maintainable only against an order or decision of the High Court passed in

exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution."

5. It is also pertinent to note that the Learned Single Judge has clearly observed that "perusal of the order further shows that there is no specific direction issued by the Court against defendant No.2 to execute the conveyance in favour of the plaintiffs even without the plaintiffs paying anything to the defendant No.1."

6. Undisputedly, the contempt which was alleged was failure on the part of the respondents to execute the sale deed while clearly admitting that the

plaintiff was still liable to pay some amount to the defendant No.1.

7. In the circumstances, there is absolutely no case made out for interference in the impugned order, apart from the fact that the appeal as such is not maintainable. The appeal is therefore rejected.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)